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ABSTRACT

This paper discusses the suspension and expulsion of unruly handicapped students by examining previous court litigation, identifying the legal issues involved, and reviewing Texas State Board of Education policy. Although sensitive and knowledgeable of the special learning and emotional needs of handicapped students, the conclusion favors recent court decisions that approve the removal of students who are disruptive and who pose a safety threat to themselves and others. (JAM)

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DISCIPLINE OF HANDICAPPED STUDENTS
-SUSPENSION AND EXPULSION-

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DISCIPLINE OF HANDICAPPED STUDENTS
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IDENTIFICATION OF THE ISSUE

Recent legislation in the state of Texas has had a tremendous effect on the entire school environment. The population of the state expected changes in education, and the remainder of the states in the United States with curiosity and anticipation have observed these changes occurring. An area of change in the educational systems in Texas has been in discipline management systems. A further extension of the discipline management system in a school district is in the discipline of handicapped students.

Recent decisions from the Supreme Court of the United States in Honig v. Doe have affected the discipline of handicapped students in the nation's schools. Texas has responded to these decisions of the Court and have readjusted some procedures for dealing with the discipline of handicapped students. In order to maintain continuity in the understanding of terminology to be utilized in this paper, the author submits that the term handicapped student is a student who has been evaluated by the standards stated in State Board of Education: Rules for Handicapped Students and has been determined by an admission, review, and dismissal committee as meeting eligibility criteria as a handicapped student. In addition, as a result of the handicapping condition special education and/or related services are recommended (1986). In addition, discipline is defined as "a system or rules or methods..., treatment that corrects..., train, control" (Webster's New World Dictionary, 1958).

The case, *Honig v. Doe*, began in 1980 when two special education students in San Francisco were involved in assaulting other students, engaged in theft, and participated in extortion. The students were suspended; however, the parents objected to the suspension in that it was their contention that the suspension was a change in placement that was not in the individualized education plan. The Ninth Circuit ruled in the students' favor declaring that PL 94-142 provided for an education of all handicapped students "regardless of the nature or severity of their handicaps" (School Law News, March 5, 1987).

The Supreme Court of the United States ruled, however, in 1988 that the Education for All Handicapped Children Act allows for temporary suspension of handicapped students, but prohibits their expulsion. Honig, Superintendent of Public Instruction in the state of California, emphasized the dangerous aspect of the behaviors of the students as it related to the disruption of the educational process for other students. The Supreme Court, however, confirmed that dangerousness was not an exception in the Education for All Handicapped Children Act (Osborne, 1988).

The decisions of the Supreme Court in *Honig v. Doe*, 108 S. Ct. 592 (1988) are as follows:

A district can utilize a ten day short term suspension.

If the parent agrees, school personnel can remove a handicapped student from his current placement.

The personnel of the school district can secure the services of the court to exclude a dangerous student from school over the parent's objection.

It is significant to educators that Honig v. Doe is the first special education discipline case to be reviewed by the Supreme Court (Jones, 1988).

Based upon the decisions of the Supreme Court in Honig v. Doe, the State Board of Education of the state of Texas adopted rules concerning the discipline of handicapped students. These adjustments in previous rules occurred in March of 1988. In communication from W. N. Kirby, Commissioner of Education, dated March 25, 1988, educators were informed of the decisions of the State Board of Education. It becomes apparent to the educator that the state of Texas provided additional regulations concerning the discipline of handicapped students:

The suspension of handicapped students may not exceed six school days, and an alternative education program may not exceed ten school days unless the ARD committee determines that the behavior is not related to the handicapping condition. Emergency removal of a handicapped student is not to exceed five consecutive school days unless the ARD committee determines that the student is a threat to himself or others.

If the parents appeal the decision, the school personnel can obtain immediate relief from a state or federal court for the removal of the student for more than ten days (Kirby).

EXISTING POINTS OF VIEW PERTAINING TO DISCIPLINE OF HANDICAPPED STUDENTS

The discipline of student populations is not a new challenge for educators. The discipline of handicapped students is a greater challenge. One of the landmark cases, *Goss v. Lopez*, 419 U.S. 565 (1975), involved the suspension and possible expulsions of students for disciplinary reasons. The Supreme Court ruled that suspensions of more than ten days or "expulsions for the remainder of the school term, or permanently, may require more formal procedures" (Reutter, 1985).

A case which involves the discipline of a handicapped student and the awarding of attorney fees is *School Board of Prince William County v. Malone*, 662 F. Supp. 978 (1987). In this case a handicapped student was expelled for distributing drugs. The parent appealed the decision contending that the student should have been disciplined for the misbehavior, but not expelled. It was determined that the student's behavior was a result of the handicapping condition, and the Court ruled in favor of the student. The parent received recovery of attorney fees (Journal of Law and Education, Winter, 1988).

Recent cases, however, have resulted in the Court's ruling in favor of the school districts. In *Hayes Through Hayes v. Unified School District*, 669 F. Supp. 1519 (1987), handicapped students filed claims against school personnel for being placed in time-out

rooms for in-school suspension. The Court ruled that the school officials utilized "reasonable disciplinary measures" and that the conduct of the school officials was "reasonably related to their...ability to discipline students" (Journal of Law and Education, Spring, 1988). In *Evans v. District No. 17*, 841 F. 2d 824 (8th Cir. 1988), an alternate plan to the individualized education plan was implemented because of behavioral problems. Consequently, the parents enrolled the handicapped student in a private school and brought an action against the school district to recover the costs of the private school. The Eighth Circuit Court of Appeals ruled in favor of the school district in that the school district had not denied the child an appropriate education (Seitz, 1988).

Toby Fishbein Rubin, attorney for the students in *Honig v. Doe*, stated, "The easiest way for schools to deal with difficult students is to remove them" (School Law News, March, 1987). This statement by Rubin was made before the *Honig v. Doe* decision by the Supreme Court. It is very apparent that deliberate due process procedures are mandated now for public school systems across this land and that disciplinary measures to be utilized with students will be methodical and well planned depending upon the particular needs of the specific student.

PERSONAL POSITION

Having been an educator for sixteen years with twelve of those years in special education, the frustrations, anxieties, and particular needs of special education students are very important to me. It is elating to be a member of the team that attempts to serve these very special children in the most appropriate manner. Services to handicapped children have made great strides in recent years. We are learning information continually about possible causes of learning problems and remediations for those learning problems. The future is brighter for handicapped children now than it has been in the history of mankind.

However, limits must be stated and followed when one's rights, needs, behaviors, and misbehaviors infringe upon others. The rulings in Honig v. Doe and the directives of the State Board of Education in matters relating to the discipline of handicapped students are deliberate, and they are fair. The author particularly appreciates the ruling of the Court that permits the removal of a handicapped student from an educational environment if that student is a threat to the safety of himself or to others. In that attendance in school is compulsory, rulings must be in place to protect us from those who would harm others either physically, emotionally, academically, or socially.

Without question, it is the professional judgement of the author that the rights of the handicapped must be protected. It

is, additionally, to the same extent the responsibility of the courts, legislature, society, and educators to protect the rights of the nonhandicapped. If a student, whether handicapped or non-handicapped, is violating the rights and privileges of another person in an educational environment, immediate and effective predetermined strategies must be activated. In the professional judgement of the author, to permit misbehavior of the handicapped because the individual is handicapped is to condone the misbehavior. It is necessary that courts and legislatures provide educators with means by which the educational environment will be a safe environment. It appears that this has been accomplished in Honig v. Doe.

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